instalment of $225,000 became payable on March 31, 1975. The next instalment was due on September 30, 1975. At the time of the issue of the Notice in Form 16D, the first instalment was, but the second and subsequent instalments were not, due. If, therefore, the breach complained of was the first instalment due on March 31, 1975, then the question would arise whether the "monthly payments" spelled out as the breach complained of, if it referred to the first instalment, was not so imprecise and inaccurate or wrong on the facts as to fail effectively to give notice of the breach to be remedied and to render the notice invalid.

With a certain adroitness that put an end to any further argument, counsel for the respondent referred to clause 1(a)(ii) in the annexure. This sub-clause required the appellant to pay interest every month and counsel therefore contended that the monthly payments in the notice referred to the obligation to pay interest every month, that this was the breach complained of, and that the notice was therefore specific enough to enable the appellant to know what was the breach complained of and what he had to do to abort the application for sale. With respect we agreed. We accordingly held that the notice was not invalid.

A last complaint was made at the appeal of the failure of the respondent in complying with section 257(1)(c) which requires that every order for sale made under section 256 shall specify the total amount due to the chargee at the date on which the order is made. This provision requires the chargee to produce at the hearing of the summons for an order of sale evidence of the amount of the loan and the interest accrued to date at the hearing of the summons. Most annexures to charges contain a provision that the statement of the chargee or the chargee's accountant shall be conclusive proof of the indebtedness of the chargor. The annexure in the instant case had no such provision. Nevertheless, it was required of the respondent to produce evidence of such amount for incorporation in the order of sale sought from the court. This the respondent did not do and the order of court did not therefore specify the total amount due to the chargee. This last objection was therefore the most substantial of the various objections taken by the appellant but his then counsel did not take it in the court below and we were not predisposed at this stage of the proceedings to consider it.

The appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *S.K. Lingam & Co.; Mah-Kok & Din.*

PUBLIC PROSECUTOR v. TAN KIM SAN

[R.Cr.J. (Harun J.) February 20, 1980]

[Kuala Lumpur — Federal Territory Criminal Revision No. 6 of 1980]

Criminal Law and Procedure — Application for postponement on ground that investigations not completed — Magistrate should exercise his power to discharge accused — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(g).

In this case the accused was alleged to have committed criminal breach of trust. The accused was charged on June 9, 1979 and the case was fixed for trial on February 6, 1980. When the case came up for trial, the prosecuting officer applied for postponement on the ground that investigations had not been completed. The learned Magistrate postponed the trial to July 16 and 17, 1980. The case was called for revision.

Held: (1) the police should refrain from the practice of "arrest first, investigate later";

(2) in this case the learned Magistrate should have exercised his powers under section 173(g) of the Criminal Procedure Code and discharged the accused instead of granting a postponement of the case.

CRIMINAL REVISION.

Yusoff bin Wali (Deputy Public Prosecutor) for the Public Prosecutor.

Bhagwan Singh for the respondent.

Harun J.: In this case the accused was alleged to have committed breach of trust of more than $20,000 in cash between May 21, 1974 and April 6, 1978.

The complaint against him was made on May 22, 1978 and he was charged before the Magistrate on June 9, 1979. He claimed trial and hearing was fixed for February 6, 1980.

When the case came up for trial, the prosecuting officer applied for a postponement of at least six months on the ground that investigations had not been completed, whereupon the learned Magistrate postponed the trial to July 16 & 17, 1980.

I sent for the records of this case under section 35 of the Courts of Judicature Act as it appeared to me that an important matter of principle and procedure is involved here.

The principle is that a person should not be charged in court until the investigation into the case against him has been completed and there is *prima facie* evidence to prosecute him of the charge. In other words, a person should not be put in peril of a criminal trial unless the prosecution is able to prove the case against him. To do otherwise is an injustice. It is unjust because of the social stigma that immediately attaches to a person once he is charged in court. He is deserted by his friends. His business is affected. His creditors close on him. His family is ashamed. He is mentally tormented awaiting trial. And last but not least, he has to incur the expense of engaging counsel. There is no consolation in the fact that he may eventually be shown to be innocent of the charge. The damage has been done.

To prosecute a person in court on a criminal charge, therefore is a grave responsibility. With all the facilities at its disposal, the police should refrain from the practice of *"arrest first, investigate later"*. That this is a matter of serious concern to the community is shown by these facts:

(i) During the last six months at the Subordinate Courts in Kuala Lumpur alone, 1,202 criminal cases were postponed because the prosecution was not ready to proceed with the trial for a variety of reasons one of these being that investigations had not been completed. This compares (at the end of the same period) with 1,530 criminal cases awaiting trial (traffic and summons cases excluded).

(ii) The court records also show that of the number of persons who were arrested and detained in re-

cent months half of them were released unconditionally by the police without any charges being preferred against them.

It is public knowledge that crime is rampant and that the police have a difficult job to do. But there are adequate provisions in the Criminal Procedure Code giving the police powers to release persons on bail after arrest pending investigations: see sections 28, 29, 387 and 388 of the Criminal Procedure Code. The procedure to be followed, therefore, should be to investigate first and arrest later. In cases where it is more expedient to effect an immediate arrest, the police should release the person arrested on police bail if investigations cannot be completed to enable a charge to be preferred before the Magistrate. The police undoubtedly have powers to arrest without a warrant from the court in most cases but the power of arrest should not be confused with the subsequent duty to charge in court a person against whom there are reasonable grounds to believe that he has committed a criminal offence. The second stage, however, is only reached when investigations have been completed because only then would the facts to prove the case be available on which to frame a charge. Without such facts, no charge can be drawn up for the simple reason that the charge contains the accusation. That there is a clear distinction between arrest and prosecution is clearly set out in section 120 of the Criminal Procedure Code. The police have powers of arrest and investigation but prosecution is the province of the Public Prosecutor. In cases where the police prosecute, they do so on behalf of the Public Prosecutor, always. It follows that when the police exercise the delegated powers of prosecution, they should always ask themselves the question whether the Public Prosecutor would institute a prosecution in the circumstances of the case.

Turning to the facts of this case, the accused is alleged to have committed criminal breach of trust over a period of four years. It took the police more than a year to investigate yet when the case came up for trial some eight months after the accused was first charged in court, investigations had still not been completed and the police say they need at least another six months. This is a clear case of premature prosecution. What if the investigations disclose that there is insufficient evidence to prosecute the accused or worse still, if he was innocent of the allegation after all. On these facts, the charge as it stands, is clearly groundless. In these circumstances, the learned Magistrate, ought to have exercised his powers under section 173(g) of the Criminal Procedure Code and discharge the accused instead of granting a postponement of the case. I would advise Magistrates to exercise their powers under section 173(g) of the Criminal Procedure Code whenever the prosecution asks for a postponement of a case on the ground that investigations have not been completed.

I direct that the case be remitted to the learned Magistrate to-day for the order to be made.

Order accordingly.

Solicitors: *Lim Soh Wah & Co.*

WONG YON LIN v. LIEW THAM SOON & ORS.

[O.C.J. (Abdoolcader J.) September 6 & 24, 1979]

[Ipoh — Civil Appeal No. 27 of 1975]

Landlord and Tenant — Claim for possession of premises — Whether premises controlled premises — Whether completed after 31st January 1948 — Question of fact for trial judge to determine — Appellate Court not entitled to interfere unless view of trial judge clearly wrong — Control of Rent Act 1966, s. 4(2)(a).

Practice and Procedure — Appeal — Question of fact — When appellate court could interfere.

In this case the respondents claimed possession of certain premises occupied by the appellants. The sole issue before the learned Magistrate was whether the premises were completed after January 31, 1948 and therefore were controlled premises. The learned Magistrate after considering the facts held that the premises were not controlled premises and he accordingly gave judgment for the respondents with costs. The appellants appealed.

Held: (1) the question of change of identity and character of premises is primarily an inference to be drawn by the trial court. It is a question of fact and degree and the appellate court should not interfere unless it is quite plain that the trial judge had come to the wrong conclusion and any advantage which he enjoyed by having been and heard the witnesses was not sufficient to explain his conclusion;

(2) in this case it is abundantly clear that the learned Magistrate has directed himself properly and on the evidence and on the facts before him he could not have come to any other conclusion. The appeal must therefore be dismissed.

Cases referred to:-

(1) *Yong Chiang* v. *Bong Tjhin Oi* [1973] 2 M.L.J. 136.

(2) *Krishna Sreedhara Panicka* v. *Chiam Soh Yong Realty Co. Ltd.* [1976] 1 M.L.J. 224.

(3) *Lau Hee Teah* v. *Hargill Engineering Sdn. Bhd. & Anor.* [1980] 1 M.L.J. 145.

(4) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.

CIVIL APPEAL.

Lim Seong Chun for the appellant.

N.T. Rajah for the respondent.

Cur. Adv. Vult.

Abdoolcader J.: The respondents instituted proceedings in the Magistrate's Court at Batu Gajah for the recovery of possession of their land in the Mukim of Sungei Trap in the District of Kinta on which stands premises No. B291 Jalan Siputeh, Pusing, occupied by the appellant. The sole issue before the learned Magistrate was whether the premises in question were controlled premises within the meaning thereof in section 4 of the Control of Rent Act, 1966, that is to say, whether or not the premises in question come within the provisions of section 4(2)(a) of the Act in that they were completed after January 31, 1948 and therefore are free from the operation of the provisions of the Act. The learned Magistrate held, and in a very careful judgment has given his reasons for doing so, that the premises are not controlled premises and he accordingly gave judgment for the respondents with costs. The appellant who was given six months to deliver up possession then appealed against the decision and I affirmed the judgment of the learned Magistrate and dismissed the appeal. I should perhaps add that the appeal came up for hearing before me only on September 6, 1979 although the learned Magistrate made his order on August 29, 1975 and on at least two occasions when this appeal was set down for hearing it was taken off the list at the ex-